

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., and)
BAYER HEALTHCARE LLC,)

Plaintiffs,)

v.)

BAXTER INTERNATIONAL INC., and)
BAXTER HEALTHCARE CORPORATION,)

Defendants.)

C.A. No. 05-349-GMS

Jury Trial Demanded

BAXTER HEALTHCARE CORPORATION,)

Counterclaimant,)

v.)

TALECRIS BIOTHERAPEUTICS, INC., and)
BAYER HEALTHCARE LLC,)

Counterdefendants.)

REDACTED VERSION DI 194

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO STRIKE AND
FOR SANCTIONS, OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE A SURREPLY**

Bradford J. Badke
Gabrielle Ciuffreda
ROPES & GRAY LLP
1251 Avenue of the Americas
New York, NY 10020-1105
(212) 596-9000
Attorneys for Bayer Healthcare LLC

Jeffrey B. Bove (#998)
Mary W. Bourke (#2356)
Mark E. Freeman (#4257)
Jaclyn M. Mason (#4737)
Christopher E. Jeffers (*pro hac vice*)
The Nemours Building
1007 North Orange Street
Wilmington, DE 19801
(302) 658-9141
*Attorneys for Talecris Biotherapeutics, Inc.
and Bayer Healthcare LLC*

The essential arguments raised by Baxter in its Opposition Brief (D.I. 193) confirm that Plaintiffs' motion to strike and for sanctions (D.I. 184) should be granted and Baxter's motion for leave to amend (D.I. 165) should be denied.

REDACTED

However, in the transcript attached to Baxter's brief, it told this Court the exact opposite, viz: that it already had the test data and that it knew at least as early as August 17, 2006, where that data was located. (*Id.*, Ex. 1 at 8.) These statements prove that Baxter's position is inconsistent, and that its delay argument is but a slim excuse for its untimely motion for leave to amend – if Baxter had the data in August why did it need more time to discover the data as it argues in its motion?

REDACTED

; and (2) Baxter's argument using the document in support of its motion for leave to amend is itself destroyed by the fact that it already possessed all of the data and knew the location thereof as of the August 17, 2006 hearing. Thus, Baxter's motion should be denied on both grounds.

Finally, Baxter concedes that it did not address the "good cause" standard in its opening brief, waiting until its reply brief. This violates the Local Rules of this Court. And because "good cause" is a threshold requirement to avoid deadlines in a Scheduling Order, Baxter admittedly failed to satisfy the requisites for its belated motion for leave to amend.

In conclusion, Plaintiffs' motion to strike and for sanctions should be granted and Baxter's motion for leave to amend should be denied.

Redacted Version: December 27, 2006

Date: December 20, 2006

Respectfully submitted,

/s/ Jeffrey B. Bove

Jeffrey B. Bove (#998)

Mary W. Bourke (#2356)

Mark E. Freeman (#4257)

Jaclyn M. Mason (#4737)

Christopher E. Jeffers (*pro hac vice*)

CONNOLLY BOVE LODGE & HUTZ LLP

1007 North Orange Street

Wilmington, DE 19801

(302) 658-9141

*Attorneys for Talecris Biotherapeutics, Inc.
and Bayer Healthcare LLC*

Bradford J. Badke

Gabrielle Ciuffreda

ROPES & GRAY LLP

1251 Avenue of the Americas

New York, NY 10020-1105

(212) 596-9000

Attorneys for Bayer Healthcare LLC

CERTIFICATE OF SERVICE

I, Jeffrey B. Bove, hereby certify on this 27th day of December, 2006 I electronically filed the foregoing **Plaintiffs' Reply Brief in Support of Their Motion to Strike and for Sanctions, or, in the Alternative, for Leave to File a Surreply**, with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	---

I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on December 27, 2006.

<u>Via Hand Delivery and E-Mail</u> Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	<u>Via Federal Express and E-Mail</u> Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	---

/s/ Jeffrey B. Bove
Jeffrey B. Bove (#998)
jbove@cblh.com